UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

EMLO CORPORATION

and **Case No. 29-CA-135944**

ASBESTOS, LEAD & HAZARDOUS WASTE LABORERS, LOCAL 78, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

***Brent Childerhose*, for the General Counsel.**
Peter M. Kutil, Esq. (King & King LLP),
of Long Island City, New York, for the Respondent.
***Tamir W. Rosenblum, Esq.*, of New York, New York, for the Union.**

Decision

Statement of the Case

STEVEN DAVIS, Administrative Law Judge. Based on a charge and a first amended charge filed on September 3, and 16, 2014, respectively, by Asbestos, Lead & Hazardous Waste Laborers, Local 78, Laborers' International Union of North America (Union), a complaint was issued against Emlo Corporation (Respondent or Employer) on December 17, 2014.

The complaint alleges that on June 14, 2014, the Respondent told its employees that its job at LaGuardia airport was nonunion, and that work would continue on nonunion terms, and that since June 14, the Respondent has refused to apply the terms of the collective-bargaining agreement to its employees at that project.

The Respondent's answer denied the material allegations of the complaint and asserted certain affirmative defenses which will be discussed below. On February 17 and 23, 2015, a hearing was held before me in Brooklyn, New York. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following

Findings of Fact

I. Jurisdiction and Labor Organization Status

The Respondent, a domestic corporation having an office and place of business in Paterson, New Jersey, and a jobsite at LaGuardia Airport, Queens, New York, has been engaged in the provision of asbestos and lead abatement services.

Annually, the Respondent has provided services valued in excess of $50,000 directly to customers outside the State of New Jersey. The complaint alleges and the Respondent admits that it has been an employer engaged in commerce within the meaning of Sections 2(6) and (7)

of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.[1]

II. The Alleged Unfair Labor Practices

A. The Facts

1. Background

In about February or March 2014, the Respondent was awarded the bid to perform asbestos abatement work at an airplane hangar at LaGuardia Airport. The Employer was a subcontractor to NASDI, LLC, a demolition company, which in turn, was a subcontractor to Tully Construction Co. All three companies reported to the Port Authority of New York and New Jersey (PANYNJ) which operates the airport.

The Employer began work on the project with one shift but then began a second shift, employing about 20 workers. Marjan (Mano) Kasapinov,[2] the owner of the Employer, signed a contract with the Union, his first as a union contractor, effective from April 24, 2014, to July 31, 2015. As alleged in the amended complaint, the contract was an 8(f) agreement, requiring employees to become members of the Union on or after the 8th day following the execution of the contract, or after the 8th day of their employment.[3]

The admitted exclusive appropriate collective-bargaining unit is as follows:

> All employees performing removal or abatement of asbestos, lead, hazardous or toxic waste, hazardous or toxic materials, mold biochemical remediation, HVAC, and duct cleaning, as defined in Article IV of the Trade Agreement between the Mason Tenders' District Council of Greater New York and Laborers Local 78 of the Laborers' International Union of North America and subject employers, in the five boroughs of New York City, Nassau County and Suffolk County.

Work began on the project in May. From the beginning of its work the Employer made no payments to the Union's benefit funds as required by the contract. At the start of the job, nonunion employees joined the Union within 8days. Later, however, it came to the Union's attention that workers who had not joined the Union after 8 days of work were employed at the site.

---

[1] The Respondent's answer denied knowledge or information that the Union was a 2(5) labor organization. However, the Employer signed a contract with the Union, which has been found to be a statutory labor organization. *Extreme Building Services Corp.*, 349 NLRB 914 (2007).

[2] References hereafter to Kasapinov are to Marjan, the Employer's owner. His son Emil Kasapinov will be referred to as Emil.

[3] Kasapinov's testimony that he signed the contract "in a good manner" at a diner where he laughed and joked with Union Agent Chris Walek does not negate the fact that the Employer was bound by it.

2. The events of June 14

On Friday, June 14, Union Business Agents Fabian Derewiecki and Fabio Morales visited the worksite to follow up on a previous conversation with Kasapinov 2 or 4 weeks earlier in which they told Kasapinov that about 5 to 8 nonunion employees must join the Union. Morales stated that he visited the site 4 to 6 times before June 14 at which times he spoke to Kasapinov in an effort to have the nonunion employees join the Union.

The two agents spoke to the union-represented employees as they arrived for work, advising them of the presence of nonunion workers who should have become members of the Union, and that the Employer had not made contributions to the Union's benefit funds or paid overtime to the workers.

They spoke in a group, the employees making no attempt to enter the worksite. According to Morales, Kasapinov approached and asked "what are you guys doing? I want the workers inside the project." Morales replied that there is a "situation" here and asked about the nonunion workers. Kasapinov answered that he was permitted to have nonunion employees. Morales retorted "yes, but it's been more than 1 week. You told us that those workers would be going into the Union and it's almost two weeks."

According to Morales, Kasapinov then screamed, asking why he was "stopping the job and talking to the employees. Why are you holding my workers? Why are they not inside?" Morales replied that he was speaking to the workers about problems at the worksite such as nonunion workers employed there and that the Employer had not paid their benefits. Morales quoted Kasapinov as replying that "the contract is over. I don't want anything else to do with the union anymore" and he told the union workers that "if you guys want to come in, work nonunion, you are welcome. If not, you guys have to leave." Morales replied that he could not breach the contract, telling Kasapinov that nonunion employees were working there for more than 1 week and had not joined the Union.

Morales translated Kasapinov's comments to the Spanish-speaking workers, telling them that the owner wants them to work "nonunion with the guys who are working here." He also explained that they would be working without benefits and they were owed overtime pay. Morales testified that he did not prevent the employees from working that day. The workers told Morales that they did not want any problems with the Union and decided not to begin work that day.

The agents then spoke with Kasapinov about having the nonunion workers join the Union. Present were about 8 union member employees. Union Agent Derewiecki quoted Kasapinov as saying that his workers "will not join the union. They are not interested in joining the Union." Kasapinov then asked the union workers to come in and work, but on a nonunion basis. Derewiecki quoted Kasapinov as telling the union-represented workers that they were fired and that he was "terminating the contract." At that point, Kasapinov entered the site and closed the entry door to the premises.

Employee Jan Jarczynski testified that the Union's agent told the workers that the employees could not begin work until everyone enrolled in the Union. He quoted Kasapinov as asking the men to begin work and Morales refusing to let them do so.

The union agents and union workers stayed at the premises for a couple of hours and then left. The agents told them to return on Monday, June 16, to see if the Employer had decided to reinstate them. In addition, some of the workers needed to return in order to retrieve

their shoes and equipment which they had left at the site on their last day of work the previous Thursday.

Owner Kasapinov stated that he began the job in April with employees who were all members of the Union or those who were at the time nonmembers but who joined the Union within the prescribed time. However, on June 14, there were two nonunion workmen employed by the Employer.

Kasapinov testified that in the morning of June 14, he saw Union Agents Morales and Chris Walek standing outside the jobsite with the union employees. Kasapinov asked why the men were not working and was told by Morales that none of the employees "can go in." Kasapinov asked the men three times to start work and Morales refused to permit them to enter. Kasapinov saw Morales holding the employees' union books.

Kasapinov stated that certain employees told him that they were threatened with the loss of all their benefits if they entered the jobsite and were frightened to begin work that day. Kasapinov testified that he told Morales that he has an obligation to finish the job "with or without the Union."

Kasapinov, corroborated by his son Emil, denied discharging the employees who did not work that day or preventing anyone from working, insisting that Union agent Morales refused to permit them to work. He also denied giving them the option of working nonunion. Kasapinov also denied saying that "there's no more contract." However, he conceded that when faced with the necessity of finishing the job he "decided to go nonunion," noting that he did so because the Union did not permit his workers to continue to work. He concluded that "he just went nonunion because I was tired of everything. Exactly." Further, Kasapinov admitted that on about June 14 he decided that he would no longer honor the Employer's contract with the Union.

Emil Kasapinov corroborated his father's testimony that he asked the men to begin work and that Morales was holding the employees' union books. Employee Jan Jarczynski confirmed that the union agents took the employees' books, which he noted is standard procedure at a jobsite.

Employee Miguel Alfaro testified that he was told by the union representatives that he had to wait to begin work due to a problem concerning nonunion workers which they sought to resolve with the Employer, and until that problem was resolved he could not work for the Respondent. He returned to the jobsite in September and was told by Kasapinov that he could return to work but that he was "going to be outside of the Union."

Similarly employee and shop steward Jan Jarczynski stated that he was told by a union agent that he could not work because certain workers did not belong to the Union. Jarczynski further stated that the men could not begin work because Morales asked the nonunion workers to join the Union and Kasapinov refused, saying that the union men "can't work because they are not going to join the union."

Charles Stives who was the chief inspector for PANYNJ, testified that on June 14, as the Employer's workers arrived, he heard the Union's delegates tell each employee "not to go into the site." He did not hear them say that their union benefits would be removed. Stives saw the union agents and the Employer speaking but could not hear what was said between them.

Shortly thereafter, Kasapinov told Stives "I don't want the employees. The Union delegates would not let the employees in, and [if] they came in they would take their union

books so he was going to hire his own people." Kasapinov asked Stives to refuse entry to all the employees. Stives gave that order to the security guards. The order was rescinded the following day.

Stives further stated that employee Jarczynski told him that he wanted to continue to work but the union delegate said that the Union would take away his union card if he did so.

A union contractor which is working on a prevailing wage project may comply with the prevailing wage law by paying the entire prevailing wage, in this case $52 per hour, in two parts: first, by a certain amount in the form of wages, and second, by paying the union's benefits to the union's funds. If the contractor does not have a union contract, it can pay the entire amount of the prevailing wage as wages directly to the employees.

Kasapinov conceded that in mid June, he changed from operating as a union company to operating as a nonunion employer. Accordingly, until June 14, he paid, pursuant to the contract, $30 per hour as wages, with the expectation that he would pay the remainder of the $52 prevailing wage as benefits to the Union's funds. However, he conceded that he never made payments to the Union's funds. After June 14, the Employer paid the full $52 per hour as wages directly to the workers.

3. The events of June 16

The following Monday, June 16, the two union agents and about six or seven Spanish-speaking union workers returned to the jobsite. According to agent Derewiecki, Kasapinov told him that the Employer would not honor its contract and is no longer a union contractor. According to Derewiecki, Kasapinov asked the union workers to return to work and they refused.

According to Morales, Kasapinov exited the door to the workplace, accused Morales of "holding the employees" and then went in and locked the door.

Those who had left their equipment at that location retrieved them and then left. Derewiecki stated that after June 14, the Employer no longer employed union-represented employees.

Kasapinov stated that the union members came to the jobsite on June 16 but the Union agents took their union books and did not permit them to work. Employees told him that they were afraid that they would lose all their union benefits if they worked for the Employer.

Emil testified that he heard Morales tell the workers that if they worked, the Union would terminate their union membership and cut their pensions. However, Morales spoke in Spanish and Emil admitted understanding only "a bit" of that language. Later, Emil conceded that what he understood Morales told the workers was based on his later conversations with the workers.

4. Later events

On June 16, the union business manager wrote to contractor NASDI, advising it of certain contractual violations by the Employer. Such alleged violations included the Respondent's (a) not affording time for employees to shower and to put on and remove their protective clothing and (b) not giving employees an opportunity to drink potable water. The letter proposed a settlement amount of 8 hours straight-time wages for each of the 26 workers.

On June 17, Kasapinov wrote to an official of the Union stating that "after numerous attempts by Union delegates from Local 78 to impede progress on the LaGuardia Airport Project, the agreement between EMLO and Local 78 has been terminated."

The letter outlined certain alleged misconduct by union agents and employees prior to June 14, including employees not working and union agents slowing down the work, threats to Emil, lying that the Employer did not provide water to workers, insisting that a grievance be satisfied by its immediate payment, preventing union workers from entering the site for 2 hours, theft of company equipment, and damage to company property.

The letter continued with a recitation of alleged union misconduct on June 14 through June 16. It stated that Derewieki and Morales impeded production by not allowing the Employer's workers to enter the site, threatening to stop union members' benefits and terminating their membership, all of which Kasapinov claimed were violations of the contract. The letter concluded by stating that "the multiple breaches of contract Local 78 has made void any and all terms of the agreement made between EMLO and Local 78. We can no longer effectively maintain a relationship with Local 78."

Indeed, Kasapinov testified that, "at least as of June 17, Emlo had decided that it was not going to follow the contract anymore."

5. The settled charge

On August 22, 2014, the Respondent filed a charge against the Union in Case 29–CB–135245. A settlement agreement was executed between the General Counsel and the Union, and approved by the Regional Director on January 21, 2015. The Employer did not enter into the agreement and its appeal, on the ground that the Regional Office was pursuing the instant case against the Respondent, was denied.

The settlement agreement, which has a nonadmissions clause, provides that the Union:

> Will not do anything to prevent you from exercising employees' Section 7 rights.
> Will not threaten employees with a loss of pension or prevent you from working, in the event you decide not to engage in a work stoppage against Emlo Corporation.
> Will not in any like or related manner restrain or coerce employees in the exercise of their rights under Section 7 of the Act.

6. The arbitration award[4]

On June 24, 2014, the Union filed a request to arbitrate certain issues including the Employer's(a) requiring union represented employees to report to work already wearing their protective gear, (b) denying union represented employees time to obtain drinking water outside the contaminated work area, and (c) requiring represented employees to shower on their own time at the end of the work day.

The award stated that the Union also sought payment for 10 union-represented

[4] As stated at the hearing, I did not receive or consider the award for the truth of the matters asserted therein.

employees who were allegedly discharged as a result of their refusal to work on a nonunion basis. Further, the Union withdrew its grievance for claims for fringe-benefit contributions which the Union claimed it would pursue after the completion of the job.

Analysis and Discussion

The complaint alleges that on June 14, 2014, the Respondent told its employees that its job at LaGuardia airport was nonunion, and that work would continue on nonunion terms.

The complaint further alleges that since June 14, the Respondent has refused to apply the terms of the collective-bargaining agreement to its employees at that project.

I credit the testimony of Union Agents Morales and Derewiecki who were present on June 14 when Kasapinov spoke to them and the assembled workers at the entrance to the jobsite. It is undisputed that Kasapinov asked the employees to begin work. The agents' mutually corroborative testimony was that they heard Kasapinov tell the men that if they wanted to work they could do so on a nonunion basis.

I cannot credit Kasapinov's testimony that he did not give his workers the option of working nonunion. Kasapinov conceded that he was obligated to complete the job and that he would continue the work "with or without the union." Faced with that choice he "decided to go nonunion." Whether that decision was based on the Union agents' alleged refusal to permit his workers to work or not, it is the fact that he "just went nonunion."

In deciding to continue to operate the Employer on a nonunion basis, the Respondent clearly could not employ workers who expected to receive the contract's terms and conditions. Therefore, the union agents' testimony is believable that Kasapinov told the men that, if they chose to work, they could do so only on a nonunion basis. Further, I credit neutral witness PANYNJ employee Stives who heard Kasapinov say that he did not want the [union] employees and that he would "hire his own people."

Indeed, neutral employee Alfaro was part of the group of employees who did not work in mid June, but he did return to work 3 months later and was told by Kasapinov at that time that he could work "outside the union."

Kasapinov conceded that on about June 14 he decided that he would no longer honor the Employer's contract with the Union. Indeed, on June 17 he wrote to the Union stating that the contract "has been terminated."

Section 8(f) permits unions and employers in the construction industry to enter into collective-bargaining agreements without a union having to establish that it has the support of a majority of the employees in the covered unit. Section 8(f) creates an exception to Section 9(a) general rule requiring a showing of majority employee support for the union. An 8(f) collective-bargaining agreement is enforceable throughout its term, and an employer violates Section 8(a)(5) and (1) of the Act by failing to adhere to, or by repudiating an 8(f) agreement during its term. *A.W. Farrell & Son, Inc.,* 359 NLRB No. 154, slip op. at 7 (2013); *John Deklewa & Sons,* 282 NLRB 1375, 1377 (1987).

In *Major Deegan Co*., 362 NLRB No. 67, slip op. at 3, 4 (2015), the Board held that by informing its employees that, in order to continue their employment, they would have to work as nonunion employees of the employer without the benefits of the union contract, the respondent violated Section 8(a)(1) of the Act.

Here, I find that the Respondent similarly told its employees that its job at LaGuardia airport was nonunion, and that in order to continue to work for the Respondent they would have to work on nonunion terms.

I further find that by repudiating its current contract with the Union and refusing to apply its terms to its employees at the LaGuardia project, that the Respondent has violated its obligations under Section 8(a)(5) and (1) of the Act. *A.W. Farrell & Son, Inc*., and *John Deklewa & Sons,* above.

The Respondent argues that inasmuch as the Union breached its obligations under the contract, it was relieved of its obligations under the contract. The Employer further argues that in the prior case in which a complaint was issued against the Union, the Board took an "inconsistent and different position" than in this case, thereby requiring dismissal of the complaint.

I disagree. The two cases are completely different. The decision to issue a complaint against the Union for its violations was completely distinct from the instant case which involves violations by the Employer. The two cases would be inconsistent if, in the case against the Union, the Regional Office decided that the Employer had not violated the Act.

In issuing the complaint against the Union it was alleged that the Union had interfered with employees' rights. In issuing the complaint here, it is alleged that the Employer had committed different violations of the Act. Neither is inconsistent with the other.

The Employer asserts that because the Union refused to permit the employees it represented, to work on June 14 and 16, it was permitted, because of economic necessity, to hire nonunion employees to complete the project's work. It further argues that the Union threatened employees with a loss of their pensions if they worked at the project.

First, these alleged violations which were the subject of a charge, were settled with the Board which contained a nonadmissions clause. See *WWOR-TV*, 330 NLRB 1265, 1272 (2000), where a charge against the union was settled and had no effect upon the employer's obligation to bargain.

Second, it has been long held that a Union's misconduct, even if egregious, does "not extinguish the employees' rights to bargain through the union." *Laura Modes Co.*, 144 NLRB 1592, 1595–1596 (1963), and cases cited therein; *St. John's Hospital*, 281 NLRB 1163, 1176 (1986) (the Board will not withhold a bargaining remedy in a refusal to bargain case in response to a peaceful strike); *Maywood Plant of Grede Plastics*, 235 NLRB 363, 363–366 (1978) (same result in response to a violent strike).

Indeed, the Employer's failure to have its nonunion workers join the Union within the contractually prescribed time, and its failure to make benefit contributions to its Funds, may be viewed as precipitating the Union's advice to its members to refuse to work. *Maywood,* above, at 366. The contract permits a strike when the "employer is in arrears on fringe benefits contributions payable to the Trust Funds…." Article XI, Section1(c).

Further, I reject the Respondent's seeming invocation of the "unclean hands" doctrine—that the Union's conduct prohibits it from benefitting from a bargaining order. The Board has held that this doctrine "does not operate against a charging party, because Board proceedings are not for the vindication of private rights, but are brought in the public interest and to

effectuate the statutory policy." *California Gas Transport*, 347 NLRB 1314, 1326 fn. 36 (2006).

I accordingly find and conclude, as alleged in the complaint, that the Respondent told its employees that its job at LaGuardia airport was nonunion, and that work would continue on nonunion terms, and that since June 14, the Respondent has refused to apply the terms of the collective-bargaining agreement to its employees at that project.

Conclusions of Law

1.The Respondent is an employer within the meaning of Section 2(2) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3.By telling its employees that its job at LaGuardia airport was nonunion, and that in order to continue to work for the Respondent they would have to work on nonunion terms, the Respondent has violated Section 8(a)(1) of the Act.

4. By refusing to apply the terms of its collective-bargaining agreement effective from April 24, 2014, to June 30, 2015, in the following appropriate collective-bargaining unit, the Respondent violated Section 8(a)(5) and (1) of the Act:

> All employees performing removal or abatement of asbestos, lead, hazardous or toxic waste, hazardous or toxic materials, mold biochemical remediation, HVAC, and duct cleaning, as defined in Article IV of the Trade Agreement between the Mason Tenders' District Council of Greater New York and Laborers Local 78 of the Laborers' International Union of North America and subject employers, in the five boroughs of New York City, Nassau County and Suffolk County.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by informing employees that, in order to continue their employment, they would have to work as nonunion employees of Respondent Emlo without the benefits of the union contract, I shall order the Respondent to cease and desist from making such coercive statements.

Having further found that the Respondent has violated Section 8(a)(5) and (1) by refusing to continue in effect all of the terms and conditions of the 2014–2015 agreement, I shall order the Respondent to honor and abide by the terms of the 2014–2015 agreement during its term. I shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of these unlawful changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NRLB No. 8 (2010).

In addition, I shall order the Respondent to compensate employees, for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, I shall order the Respondent to make all contractually-required contributions to fringe benefit funds that it failed to make, if any, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*, above.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Emlo Corporation, Patterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a)Telling its employees that its job at LaGuardia airport was nonunion, and that in order to continue to work for the Respondent they would have to work on nonunion terms.

(b) Refusing to apply the terms of its collective-bargaining agreement with Asbestos, Lead & Hazardous Waste Laborers, Local 78, Laborers' International Union of North America, effective from April 24, 2014, to July 31, 2015, to its employees in the below appropriate collective-bargaining unit:

> All employees performing removal or abatement of asbestos, lead, hazardous or toxic waste, hazardous or toxic materials, mold biochemical remediation, HVAC, and duct cleaning, as defined in Article IV of the Trade Agreement between the Mason Tenders' District Council of Greater New York and Laborers Local 78 of the Laborers' International Union of North America and subject employers, in the five boroughs of New York City, Nassau County and Suffolk County.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and comply with the terms of the collective-bargaining agreement, effective from April 24, 2014, to July 31, 2015, covering employees in the above collective-bargaining unit.

(b) Make the unit employees whole for any loss of earnings or other benefits they may

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

have suffered as a result of the Respondent's unlawful failure to comply with the 2014–2015 collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this Decision.

(c) Compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

(d) Make all contractually required contributions to fringe benefit funds that it has failed to make since April 24, 2014, if any, as set forth in the remedy section of this Decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Paterson, New Jersey, and LaGuardia Airport, copies of the attached notice marked "Appendix."[6] Copies of the notice, in English and in Spanish, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 14, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 26, 2015.

_____
Steven Davis
Administrative Law Judge

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT tell you that our job at LaGuardia airport was nonunion, and that in order to continue to work for us you would have to work on nonunion terms.

WE WILL NOT refuse to apply the terms of our collective-bargaining agreement with Asbestos, Lead & Hazardous Waste Laborers, Local 78, Laborers' International Union of North America, effective from April 24, 2014, to July 31, 2015, to you in the below appropriate collective-bargaining unit.

> All employees performing removal or abatement of asbestos, lead, hazardous or toxic waste, hazardous or toxic materials, mold biochemical remediation, HVAC, and duct cleaning, as defined in Article IV of the Trade Agreement between the Mason Tenders' District Council of Greater New York and Laborers Local 78 of the Laborers' International Union of North America and subject employers, in the five boroughs of New York City, Nassau County and Suffolk County.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and comply with the terms of our collective-bargaining agreement, effective from April 24, 2014, to July 31, 2015, covering you in the above collective-bargaining unit.

WE WILL make you whole for any loss of earnings or other benefits you may have suffered as a result of our unlawful failure to comply with our 2014–2015 collective-bargaining agreement, with interest.

WE WILL compensate you for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for you.

WE WILL make all contractually required contributions to fringe benefit funds that we have failed to make since April 24, 2014, if any.

EMLO CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-135944 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.